

[*James v. Pritts-McEnany Roofing, Inc.*](#), 96-ERA-5 (ARB Jan. 23, 1997)

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U.S. Department of Labor
Office of Administrative Law Judges
800 K Street, N.W.
Washington, D.C. 20001-8002

In the Matter of

Date issued: JAN 23 1997
CASE No. 96-ERA-5

TRACY A. JAMES,
Complainant,

vs.

PRITTS- MC ENANY ROOFING, INC.,
Respondent.

**RECOMMENDED
ORDER REGARDING SETTLEMENT**

This matter is before the undersigned administrative law judge for a recommendation regarding the parties' proposed settlement agreement. The undersigned has considered the settlement agreement previously, and on November 25, 1996 issued an Order to the parties directing them to submit additional information within ten days of that Order. A copy of the Order of November 25, 1996 is attached, as is a copy of the additional information submitted by Complainant's counsel.¹

Review of the materials submitted shows that the \$25,000.00 settlement amount will result in a net amount to Complainant of \$13,644.16. The remainder of the settlement amount consists of \$10,000.00 to her attorney, representing a 40% contingency fee, and costs of ,355.84. I note that a 40% contingency fee is higher than the one-third usually seen in such fee agreements, and that counsel's 40% has been calculated before deduction of costs. However, the percentage of the fee does not, in this case, render the settlement unfair,

inadequate, or unreasonable. While the Wage and Hour Division found Ms. James' complaint to have merit, it declined to award any damages. Thus Ms. James' attorney's agreement to handle the case entailed enhanced risk to him right from the outset, such that an enhanced percentage contingency is not unreasonable. Nothing in the record suggests that calculation of the 40% contingency fee before reduction for costs is outside the ordinary practice of law in Florida. Moreover, all parties have agreed to the terms of the settlement. Ms. James has specifically agreed to the fee of \$10,000.00 and the means of calculation. Her success before this tribunal has resulted in \$13,000.00 to her that she would not have realized had her attorney not agreed to take her case. I therefore recommend that the Administrative Review Board find the settlement agreement acceptable, and issue an order dismissing this matter.

Christine S. McKenna
Administrative Law Judge

NOTICE: This Recommended Order and the administrative file in the matter will be forwarded for review by the Secretary of Labor, Room S-4309, Frances Perkins Building, 200 Constitution Avenue, N.W., Washington, D.C. 20210. The Office of Administrative Appeals has the responsibility to advise and assist the Secretary in the preparation and issuance of final decisions in employee protection cases adjudicated under the regulations at 20 C.F.R. Parts 24 and 1978. See 55 Fed. Reg. 13250 (1990).

[ENDNOTES]

¹Counsel for Complainant Tracy A. James submitted the requested information on December 4, 1996 in timely compliance with the order of November 25, 1996. For reasons that have not been determined, counsel's submission of this information was apparently overlooked and undocketed. He has since telefaxed a conformed copy of his submission of December 4, 1996. The Office of Administrative Law Judges regrets the delay.